IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3950 OF 2005

The State of Maharashtra ..... Applicant
(Ori.complainant)

versus

Ramesh C. Konde & Ors. .... Respondent
(Ori.accused)

Shri U.V.Nikam APP for the applicant.
Shri V.V. Purwant adv. for the respondent.

CORAM; ABHAY S. OKA, J.

DATE ON WHICH
JUDGMENT IS PRONOUCED: 20TH DECEMBER 2006.

JUDGMENT;

1. I have heard the learned Additional Public Prosecutor in support of the prayer for grant of leave to prefer an appeal. The acquittal of the respondents is for offences punishable under sections 147, 148, 323 read with section 149, section 504 read with section 149, section 506 read with section 149 of the Indian Penal Code. Offences punishable under section 3 (1)(x) read with section 3(1)(xi) read with section 6 of the Scheduled Caste and Scheduled Tribes (Prevention of Attrocities) Act 1989 were also alleged against the respondent. According to the prosecution case, the respondent also committed offence punishable under section 7(1) (d) of the Protection of Civil

Rights Act and section 135 of the Bombay Police Act, 1951.

2. The perusal of the impugned judgment and order shows that the learned trial Judge has considered the entire oral and documentary evidence on record. The learned trial Judge on consideration of the evidence found that it was not established by the prosecution that the accused no.4 does not belong to Scheduled Caste or Scheduled Tribe.

3. The learned trial Judge has referred to the alleged utterances made by the accused persons on the basis of which allegation of offences punishable under the said Act of 1989 have been made. The learned trial Judge has disbelieved the prosecution case on the ground that the version of the witnesses on the said aspect is completely contradictory.

4. During the cross examination of the complainant, she was confronted with the affidavit dated 23-10-2003 executed by her on a stamp paper before a Notory Public. The said affidavit records that no one had abused her and others on the ground of caste. The affidavit further records that she had filed the complaint due to misunderstanding and due to the fact that she was very annoyed.

5. The learned trial Judge found that according to the case made out by the complainant, the P.w.2 and P.w.5, they were assaulted by the accused by a whip as well as by kicks and fist blows. The learned Judge found that no evidence was brought on record to show that the injuries sustained by the complainant and two witnesses were possible as a result of assault by whip.

6. After perusing the notes of evidence, I found that the view taken by the learned trial Judge on the basis of appreciation of evidence is certainly a possible view which could have been taken on the basis of evidence on record. Evem assuming that another view is possible to be taken, it is not a ground to interfere in an appeal against acquittal. Hence no case is made out for grant of leave to prefer an appeal. Hence application is rejected.

(ABHAY S. OKA)